

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

GEOFFREY R. LAWSON, SR.,

Plaintiff,

vs.

BRENT CARNEY, et al.,

Defendants.

No. 2:15-CV-0184-MKD

ORDER:

- (1) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT TO CONDUCT DISCOVERY (ECF No. 62);
- (2) DENYING DEFENDANTS' MOTION TO STAY DISCOVERY ECF No. 69);
- (3) STRIKING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (ECF No. 39);
- (4) DENYING PLAINTIFF'S MOTION FOR EXTENSION OF TIME (ECF No. 63)
- (5) DENYING PLAINTIFF'S RENEWED MOTION FOR PRELIMINARY INJUNCTION (ECF No. 68);
- (6) SETTING REVISED SCHEDULING ORDER

1 Geoffrey Lawson is a prisoner at Airway Heights Corrections Center (AHCC)  
2 in Airway Heights, Washington. ECF No. 8 at 6. Proceeding *pro se*, Plaintiff  
3 brings suit under 42 U.S.C. § 1983. ECF No. 8 at 5. He alleges Department of  
4 Corrections (DOC) Chaplain Joseph Luce, Food Services Manager Mark Murphy,  
5 Dietary Services Manager Brent Carney, ARNP Jody Sabatino, and Assistant  
6 Supervisor Patric Knie (collectively “Defendants”)<sup>1</sup> temporarily denied him a kosher  
7 diet and continue to deny him a soy-free diet. ECF No. 8 at 5. Defendants’ denials,  
8 Plaintiff contends, deprived him of the rights protected by the First, Eighth, and  
9 Fourteenth Amendments and the Religious Land Use and Institutionalized Persons  
10 Act. ECF No. 8 at 5. Plaintiff seeks a variety of monetary, declaratory, and  
11 injunctive relief.

12 **BEFORE THE COURT** are five motions: (1) Plaintiff’s Motion for  
13 Continuance of Summary Judgment to Permit Discovery (Plaintiff’s Motion for  
14 Continuance) (ECF No. 62); (2) Defendants’ Motion to Stay Discovery Pending  
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17 <sup>1</sup> Plaintiff included K. Coun and A.C. Butler as “additional Defendants” on the fifth  
18 page of his complaint. Rule 10(a) requires a plaintiff to name “all the parties” in title  
19 of a complaint. Because he did not comply with Rule 10(a) or plead facts against  
20 these persons, the Court did not add them as Defendants to this action. ECF No. 9.

1 Resolution of Defendants' Summary Judgment Motion (Defendant's Motion to Stay  
2 Discovery) (ECF No. 69); (3) Defendants' Motion for Summary Judgment (ECF No.  
3 39); (4) Plaintiff's Motion for an Extension of Time (Plaintiff's Motion for  
4 Extension) (ECF No. 63); and (5) Plaintiff's Renewed Emergency Motion for  
5 Preliminary Injunction or in the Alternative Release from Custody (Renewed Motion  
6 for Preliminary Injunction) (ECF No. 68).

7 **PLAINTIFF'S MOTION FOR CONTINUANCE (ECF NO. 62) AND**  
8 **DEFENDANT'S MOTION TO STAY DISCOVERY (ECF NO. 69)**

9 Plaintiff moves this Court for a continuance for one year to permit him time to  
10 conduct discovery before ruling on Defendants' Motion for Summary Judgment.  
11 ECF No. 62. Rule 56(d) permits a court to extend a response deadline where the  
12 "nonmovant shows by affidavit or declaration that, for specified reasons, it cannot  
13 present facts essential to justify its opposition." FED. R. CIV. P. 56(d). Defendants  
14 ask this Court to deny Plaintiff's request for additional time to conduct discovery,  
15 asserting they are entitled to qualified immunity, and Plaintiff failed to articulate the  
16 discoverable facts he sought and how such facts would create a genuine issue of  
17 material fact. Moreover, Defendants have filed a separate motion, seeking a stay of  
18 discovery until the Court rules on the motion for summary judgment. ECF No. 69.

19 Under Rule 56(d), a party seeking time for discovery must show: "(1) it has  
20 set forth in affidavit form the specific facts it hopes to elicit from further discovery;

(2) that the facts sought exist; and (3) that the sought-after facts are essential to oppose summary judgment.” FED. R. CIV. P. 56(d); *see also Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008). “[T]he party seeking a continuance bears the burden to show what specific facts it hopes to discover that will raise an issue of material fact.” *Continental Maritime v. Pacific Coast Metal Trades*, 817 F.2d 1391, 1395 (9th Cir. 1987). “The burden is on the party seeking additional discovery to proffer sufficient facts to show that the evidence sought exists, and that it would prevent summary judgment.” *Chance v. Pac-Tel. Teletrac, Inc.*, 242 F.3d 1151, 1161 n.6 (9th Cir. 2001).

As an initial matter, to date, the parties have not exchanged any discovery. In his motion and affidavit, Plaintiff set forth the discovery he would seek if granted additional time. ECF No. 62-1. For example, Plaintiff explained that he needs additional time to discover who denied him his kosher diet, how he was removed from the list of inmates whom receive a kosher diet, and how Defendants’ expert concluded Plaintiff is not allergic to soy. Such inquiry is relevant to the matters addressed in Defendants’ motion for summary judgment.

Defendants ask this Court to deny Plaintiff’s Motion for Continuance, contending they are entitled to qualified immunity. Qualified immunity confers upon officials “a right, not merely to avoid ‘standing trial,’ but also to avoid the burdens of ‘such pretrial matters as discovery.’ ” *Dunn v. Castro*, 621 F.3d 1196,

1 1199 (9th Cir. 2010) (quoting *Behrens v. Pelletier*, 516 U.S. 299, 308 (1996)).  
2 “Until this threshold immunity question is resolved, discovery should not be  
3 allowed.” *Siebert v. Gilley*, 500 U.S. 226, 231 (1991). But qualified immunity is  
4 only an immunity from suit for damages, it is not an immunity from suit for  
5 declaratory or injunctive relief. *See L.A. Police Protective League v. Gates*, 995  
6 F.2d 1469, 1472 (9th Cir. 1993). Plaintiff seeks monetary, declaratory, and  
7 injunctive relief. ECF No. 8. Even if Defendants are entitled to qualified immunity  
8 from his claims for monetary relief, this Court must determine whether Plaintiff is  
9 entitled to discovery on his claims for injunctive and declaratory relief. In addition,  
10 Defendants’ motion for summary judgment is not limited to the issue of qualified  
11 immunity. *See* ECF No. 39 at 3-13.

12 Some limited discovery may be permitted even when a defendant asserts a  
13 qualified immunity defense. As the Supreme Court observed, qualified immunity  
14 does not protect an official from all discovery, but only from that which is “broad-  
15 reaching.” *Crawford-El v. Britton*, 523 U.S. 574, 593 n.14 (1998). Discovery may  
16 be appropriate where, for example, the defendant’s characterization of his actions  
17 differ from the plaintiff’s characterization of those actions. *Id.* (citing *Anderson v.*  
18 *Creighton*, 483 U.S. 635, 646, n.6 (1987)). Here, for example, Plaintiff  
19 characterizes Defendants’ conduct as deliberate and intentional while Defendants’  
20 contend they were, at worst, negligent. To permit Plaintiff the opportunity to  
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1 discover facts relating to Defendants' intent, time for additional discovery is  
2 appropriate.

3 Accordingly, the Court **GRANTS IN PART** Plaintiff's Motion for  
4 Continuance (ECF No. 62), **DENIES** Defendant's Motion to Stay (ECF No. 69), and  
5 sets forth a revised scheduling order below.

6 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (ECF No. 39)**

7 The Court **STRIKES** Defendants' Motion for Summary Judgment (ECF No.  
8 39) to, as explained above, permit Plaintiff additional time to conduct discovery.  
9 Defendants may refile their motions for summary judgment consistent with the  
10 revised scheduling order.

11 **PLAINTIFF'S MOTION FOR EXTENSION OF TIME (ECF No. 63)**

12 Plaintiff seeks a two-week extension to file his response to Defendant's  
13 Motion for Summary Judgment, ECF No. 63, which Defendants do not oppose.  
14 ECF No. 65 at 3. The Court **DENIES** Plaintiff's Motion as moot, given the Court's  
15 other rulings (ECF No. 63).

16 **RENEWED EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**  
17 **(ECF No. 68)**

18 When Plaintiff filed his complaint in August of 2015, he also sought an  
19 emergency injunction to prohibit Defendants from serving him soy and non-kosher  
20 food. ECF Nos. 2, 8. Defendants responded, contending Plaintiff was receiving a  
21 kosher diet and had not demonstrated a medical need for a soy-free diet. ECF No.

1 16. The Court denied Plaintiff's motion for an injunction but ordered Defendants to  
2 test Plaintiff for "any soy or other food allergy." ECF No. 26 at 2. Plaintiff  
3 submitted to an allergy test for soy on November 30, 2015, which results indicated  
4 he is not allergic to soy. ECF No. 37.

5 Plaintiff has filed a Renewed Motion for Preliminary Injunction, contending  
6 that he suffers from Gastroesophageal Reflux Disease (GERD/acid reflux), which he  
7 alleges the soy in his diet exacerbates. He asks this Court to order Defendants to: (1)  
8 reimburse the six inmates he alleges provided him with food; (2) provide him \$60.00  
9 per day so that he may purchase kosher food; and (3) refrain from confiscating any  
10 of his food or hygiene products until this litigation concludes. In the alternative,  
11 Plaintiff seeks release from custody. Defendants contend the motion should be  
12 denied, as was the initial motion for preliminary injunction, because no new facts  
13 exist. ECF No. 71.

14 "A plaintiff seeking a preliminary injunction must establish that he is likely to  
15 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
16 preliminary relief, that the balance of equities tips in his favor, and that an injunction  
17 is in the public interest." *Am. Freedom Def. Initiative v. King Cty.*, 796 F.3d 1165,  
18 1168 (9th Cir. 2015) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20  
19 (2008)). Because Plaintiff has not demonstrated that he is likely to succeed on the  
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merits and has not produced any evidence that he suffers from a soy allergy or is in any danger of irreparable harm, the Court **DENIES** the motion (ECF No. 68).

**ACCORDINGLY, IT IS ORDERED:**

1. Plaintiff's Motion for Continuance (**ECF No. 62**) is **GRANTED IN PART**.

2. Defendants' Motion to Stay Discovery (**ECF No. 69**) is **DENIED**.

3. Defendants' Motion for Summary Judgment (**ECF No. 39**) is **STRUCK**.

4. Plaintiff's Motion for Extension (**ECF No. 63**) is **DENIED** as moot.

5. Plaintiff's Renewed Motion for Preliminary Injunction (**ECF No. 68**) is **DENIED**.

**IT IS FURTHER ORDERED** that the following schedule is established:

1. Pursuant to Rule 16 of the Federal Rules of Civil Procedure (Fed. R. Civ. P.), this schedule "shall not be modified except upon a showing of good cause and by leave [of the Court]." Fed. R. Civ. P. 16(f) provides for sanctions for failure to obey the Scheduling Order.

2. The parties are reminded to follow all Federal and Local Rules, in particular Local Rule (LR) 7.1, which governs motion practice. **The Court may choose to disregard any materials not timely filed and motions not noted for hearing in compliance with the rules.**

1 LR 7.1(f) will be strictly enforced. Motions for leave to file an overlength  
2 brief must be filed and ruled on prior to filing the overlength brief. Overlength  
3 briefs will be allowed only when good cause is shown.

4 3. Pursuant to Fed. R. Civ. P. 26(a)(3), plaintiff shall provide all disclosures  
5 regarding experts to defendants no later than **June 10, 2016**. Defendants shall  
6 provide all Rule 26(a)(2) disclosures by **June 24, 2016**. The parties shall identify  
7 any rebuttal experts and provide their reports by **July 8, 2016**.

8 4. All discovery shall be completed on or before **August 1, 2016**. All written  
9 discovery shall be served no later than 40 days prior to the discovery cut-off date.

10 **THE PARTIES SHALL FILE NO DISCOVERY EXCEPT THOSE PORTIONS**  
11 **NECESSARY TO SUPPORT MOTIONS.** If the parties need a ruling as to any  
12 discovery question and wish to avoid the time and expense of a written motion, they  
13 may, together, obtain an expedited ruling through a telephone conference call to the  
14 Court at 1-877-336-1828, access code: 3873484. The parties should contact  
15 chambers prior to any telephonic conference call to schedule the call. This may be  
16 accomplished by sending an email with the proposed date and time to  
17 [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

18 5. All dispositive motions shall be filed and served on or before **August 15,**  
19 **2016**. This deadline may only be altered by the Court, for good cause shown.

20 (a) The motion must strictly comply with all requirements of LR 7.1 and 56.1.

1 (b) Counsel should make evidentiary objections as discussed in LR 56.1(b)  
2 and (c) within the parties' statement of facts as opposed to filing a separate motion  
3 to strike.

4 (c) All materials filed in support of, or in opposition to, a motion for summary  
5 judgment must strictly comply with the requirements of Fed. R. Civ. P. 56(e). *See*  
6 *Orr v. Bank of America*, 285 F.3d 764 (9th Cir. 2002).

7 (d) The Court's copies of any exhibits submitted in support of, or in  
8 opposition to, a dispositive motion shall be bound and tabbed.

9 (e) Failure to comply with the above requirements may result in the Court  
10 disregarding any noncomplying pleadings.

11 6. (a) In accordance with Fed. R. Civ. P. 26(a)(3), exhibit and witness lists  
12 shall be filed and served, and exhibits made available for inspection (or copies  
13 provided) on or before **November 14, 2016**.

14 (b) All exhibits shall be premarked: plaintiff's exhibits shall be numbered 1  
15 through 100; defendants shall use numbers 101 through 200.

16 (c) The parties shall also serve, but not file at this time, a list of those  
17 witnesses whose testimony may be by deposition, along with a purged transcript of  
18 deposition testimony (see, LR 32.1).

19 (d) Any objection to use of a deposition or an exhibit proposed by an  
20 opponent shall be filed and served by **December 12, 2016**. And shall be heard at the

1 pretrial conference. A failure to object will be considered a waiver, and all items  
2 listed and not objected to will be considered admitted.

3 (e) **January 9, 2017**, the parties shall submit a bound and tabbed bench copy  
4 of their exhibits for the Court's reference at the pretrial conference.

5 7. A joint pretrial order, prepared in accordance with the format provided in  
6 LR 16.1(b), shall be filed on or before **January 9, 2017**. The joint pretrial order  
7 shall additionally be emailed to [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov). The list of  
8 exhibits contained in the joint pretrial order shall reflect the exhibit marking scheme  
9 described above. In preparing the joint pretrial order, the parties shall confer  
10 regarding duplicate exhibits and determine which party will admit such exhibits for  
11 trial.

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16 8. Unless otherwise ordered, a final telephonic pretrial conference shall be  
17 held **January 11, 2017, at 11:00 a.m.** The parties shall call the court's conference  
18 line at: **877-336-1828 Access Code: 3873484#** five minutes before the time  
19 scheduled for the conference. Counsel for defendants shall facilitate plaintiff's  
20 telephonic participation if he is incarcerated. After the pretrial conference, the case

1 will be referred to the assigned District Court Judge for trial.

2 **IT IS SO ORDERED.** The District Executive is directed to file this Order  
3 and provide copies to Plaintiff and counsel for defendants.

4 DATED May 11, 2016.

5 S/ Mary K. Dimke  
6 MARY K. DIMKE  
7 UNITED STATES MAGISTRATE JUDGE  
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